

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LAWRENCE ORTIZ,)	4:13CV3139
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
MICHAEL L. KENNEY,)	
)	
Respondent.)	

This matter is before the court on Petitioner’s Notice of Appeal. (Filing No. [21](#).) The court dismissed Petitioner’s habeas corpus petition with prejudice and entered judgment against him on May 29, 2014. (Filing No. [19](#) and Filing No. [20](#).) On July 8, 2014, Petitioner filed a Notice of Appeal (Filing No. [21](#)). The Notice of Appeal reads, in its entirety: “I am requesting to appeal judge Kopf decision denying my writ of habeas corpus. Please allow me an extension and send me my docket number because misplaced my docket number.” (*Id.*)

[Federal Rule of Appellate Procedure 4](#) (“Rule 4”) governs the time in which a notice of appeal must be filed. As set forth in Rule 4, a notice of appeal “must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.” [Fed. R. App. P. 4\(a\)\(1\)\(A\)](#). This time limit is mandatory and jurisdictional, and failure to file a timely notice of appeal deprives an appellate court of jurisdiction. *See, e.g., Lowry v. McDonnell Douglas Corp.*, [211 F.3d 457, 462-64 \(8th Cir. 2000\)](#) (citations omitted). However, Rule 4 permits an extension of time in which to file an appeal if “a party so moves no later than 30 days after the time prescribed by . . . Rule 4(a) expires.” [Fed. Rule App. P. 4\(a\)\(5\)\(A\)\(i\)](#). Here, in accordance with Rule 4(a)(5)(A)(i), the court extends the time in which Petitioner had to file a notice of appeal and considers Petitioner’s notice of appeal timely filed. However, as set forth in the court’s Memorandum and Order denying habeas corpus relief, the court will not issue a certificate of appealability in this matter.

IT IS THEREFORE ORDERED that:

1. On the court's own motion, pursuant to [28 U.S.C. § 1915\(a\)\(1\)-\(2\)](#) and after considering Petitioner's financial status as shown in the records of this court, leave to proceed in forma pauperis on appeal will be granted and Petitioner is relieved from paying the appellate filing fee at this time.
2. The court extends the time in which Petitioner has to file a notice of appeal, and considers his notice of appeal timely filed.
3. As set forth in the court's Memorandum and Order dated May 29, 2014, the court will not issue a certificate of appealability in this matter.

DATED this 9th day of July, 2014.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.